

## **EXHIBIT 28**

Message

---

**From:** Abel Santamaria [Santamaria@wmllp.com]  
**Sent:** 3/12/2019 2:49:52 PM  
**To:** tjtener@ktrfirst.com  
**CC:** Tom [tli@sprgp.com]; Morris Missry [MISSRY@wmllp.com]; Sam Rottenberg [sam.rottenberg@gmail.com]  
**Subject:** Sent on behalf of Morris Missry re:  
**Attachments:** 20190312\_105149.pdf

Please let me know if you have any problems opening the attached pdf.

Abel Santamaria  
WACHTEL MISSRY LLP  
One Dag Hammarskjold Plaza  
885 Second Avenue | New York, NY 10017  
Telephone: (212) 909-9549  
Email: [santamaria@wmllp.com](mailto:santamaria@wmllp.com) | Website: [www.wmllp.com](http://www.wmllp.com)

IMPORTANT NOTICES: NOTICE UNDER E-SIGN ACT: Unless specifically set forth herein, the transmission of this communication is not intended to be a legally binding electronic signature; and no offer, commitment or assent by or on behalf of the sender or the sender's client is expressed or implied by the sending of this email, or any attachments hereto. NOTICE OF ATTORNEY'S CONFIDENTIALITY: This email is confidential and may also be privileged. If you are not the intended recipient please delete it and notify us immediately by telephoning or e-mailing the sender. You should not copy it or use it for any purpose nor disclose its contents to any other person.

\*\*\*\*\*

U.S. Treasury Circular 230 Notice: Any U.S. federal tax advice included in this communication was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal tax penalties.

\*\*\*\*\*

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

**Exhibit  
P28**



REAL ESTATE ADVISORS

March 8, 2019

Mr. Morris Missry  
Managing Partner  
Wachtel Missry  
One Dag Hammarskjold Plaza, 47th Floor  
885 Second Avenue  
New York, NY 10017  
Tel: (212)909-9557

Via Email: [missry@wmllp.com](mailto:missry@wmllp.com)  
[sam.rottberg@gmail.com](mailto:sam.rottberg@gmail.com)

**Re: 840 Atlantic Avenue  
(AKA 547 Vanderbilt Avenue and 847-853 Pacific Street)  
Brooklyn, New York 11238  
Block 1122, Lots 1, 68 and 71**

Dear Mr. Missry:

As requested, KTR Real Estate Advisors LLC ("KTR") intends to prepare an appraisal of the above referenced properties. Situated as noted, the subject property consists of a 29,000± square foot, U-shaped parcel of land with frontage on Atlantic Avenue, Vanderbilt Avenue and Pacific Street in the Prospect Heights section of Brooklyn. The subject property is identified on the Kings County tax maps as Block 1122, Lots 1, 68 and 71. The subject property is currently improved with a 3,760 square foot free standing quick-service restaurant building. It is our understanding that the lease with the McDonald's Corporation ("Tenant") includes an Option Rent Addendum (the "Addendum") that sets the annual rent during the first extension period described in Article 13 of the Lease as the greater of:

- A. Eighty percent (80%) of the Fair Market Rental Value of the Demised Premises at the end of the primary term, exclusive of any and all improvements then existing on the Demised Premises (call the "FMV"), as determine by written agreement of Landlord and Tenant; or
- B. During the first five-year option, Tenant shall pay month rent of \$16,032.58.

The Addendum provides a method for resolving a dispute between Landlord and Tenant as to the FMV in which in two party appointed MAIs and one neutral MAI determine the FMV in a defined Appraisal Proceeding. "The rental value shall be established based upon a definition of Fair Market Rental Value as the price which an average well-informed tenant would pay and an average well-informed landlord would accept, exclusive of Tenant's improvements, knowing all of the uses to which the property can be put, without duress on either party." As such, the purpose of this appraisal is to estimate the FMV as defined within the Addendum. It is anticipated that the FMV will be based on the standard market data approach technique for valuing vacant land (the Sales Comparison Approach). As called for in the Addendum, the results of our appraisal will be communicated in a "letter opinion of value." Additionally, KTR will prepare a detailed work file adequate to illustrate the Sales Comparison Approach and analysis of the comparable ground leases utilized to estimate the FMV. Although the Addendum provides for the possibility of utilizing a land residual technique in the event that adequate comparable leases are not available, the scope of this assignment does not anticipate the need for a land residual. Should a land residual technique be required, KTR would undertake this additional scope, if directed by you, for an additional fee.

Lot 1 is an L-shaped parcel divided by Zoning Districts. The northern portion of the site, fronting on Atlantic Avenue is situated within an M1-1 manufacturing district, while the southern portion of the site is within an R6B residential district. Lot 68 also appears to be divided by zoning district with the easterly portion of the site within the R6B district and the westerly portion in the M1-1 district. Lot 71 is fully located within the M1-1 manufacturing district.

The purpose of the appraisal is to estimate the FMV of the subject site as directed in the Addendum as of April 9, 2019.

551 Madison Avenue, New York, NY 10022  
TEL 212.906.9400 • FAX 212.935.5935





Mr. Morris Missry  
Wachtel Missry  
March 8, 2019  
Page 2

It is understood that the intended use of this report is assist Wachtel Missry and its client, Vanderbilt Atlantic Holdings LLC, in the determination of the FMV for the subject property.

The appraisal report will be prepared in conformity with and subject to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. It is anticipated that the report will develop the Sales Comparison Approach. The scope of work will not include land residual analyses, Income Capitalization or Cost approaches. The report will be prepared subject to the attached Basic Assumptions and Limiting Conditions.

KTR has appraised the subject property for Vanderbilt Atlantic Holdings LLC within the last year. Other than this appraisal, KTR has not provided any services, as an appraiser or in any other capacity relating to the subject property within the last three years.

In order to initiate the assignment, the following information, **if available**, should be provided as soon as possible:

- Copies of any leases that encumber the properties
- Survey of the properties detailing the site area within each zoning district
- Zoning Analysis, if available
- Development plans, if available
- Details of the most recent transfers (sales), contracts of sale, current listings or purchase offers involving the subject properties
- The most recent minutes or releases relating to the M-Crown proposed rezoning.

#### Fee Schedule

Our fee to develop an opinion of the subject's FMV and prepare a letter opinion of value, inclusive a detailed work file in anticipation of the Appraisal Proceeding is \$10,000. In the event that a narrative Appraisal Report is required in addition to the letter opinion of value, our fee to author the narrative Appraisal Report would be an additional \$10,000.

It is anticipated that additional services relating to the pending Appraisal Proceeding may be required, including, but not limited to, the selection of a neutral appraiser, the development of a Land Residual technique (as detailed in the Addendum), preparation of rebuttal reports, deposition, pre-Appraisal Proceeding preparation, meetings, and participation in the Appraisal Proceedings. Additional services will be billed at KTR's standard hourly rates, plus travel and related expenses. Presently, KTR's standard rates are \$700 per hour for qualified expert witnesses and principals of the firm, \$500 per hour for MAI designated appraisers, \$350 per hour for Senior Appraisers, \$250 per hour for Associates and \$75 per hour for support staff. It is agreed that KTR's rate will remain fixed through December 31, 2019. **A non-refundable retainer in the amount of \$15,000 is required upon acceptance of this proposal.** KTR will issue monthly invoices for services rendered with the balance due within 30 days of receipt. Payment of our fees is not contingent upon the appraised value or any other prearranged condition.

It is understood that while this agreement is with counsel to Vanderbilt Atlantic Holdings LLC (the "Landlord"), we shall look directly to Landlord, and not to counsel for Landlord, for payment of its fee.



Mr. Morris Missry  
Wachtel Missry  
March 8, 2019  
Page 3


Timing

We expect to complete our appraisal of the FMV and deliver an electronic copy of the letter opinion of value (in pdf format) to your office within approximately 3-4 weeks from receipt of the signed agreement, retainer and required property information.

We appreciate the opportunity to present this proposal. If it correctly states your understanding of the work to be performed, please sign one copy of this letter and return it to this office as your authorization to proceed.

Very truly yours,

KTR REAL ESTATE ADVISORS LLC

  
By: Thomas J. Teher, MAI  
Managing Member  
(212) 906-9499

Accepted this 12<sup>th</sup> day of MARCH, 2019.

Wachtel Missry

By: 

Title: MANAGING PARTNER

FOR PAYMENT AND INDEMNIFICATION PURPOSES

Accepted this 11<sup>th</sup> day of March, 2019.

Vanderbilt Atlantic Holdings LLC

By: 

Title: \_\_\_\_\_



Mr. Morris Missry  
Wachtel Missry  
March 8, 2019  
Page 4

#### **BASIC ASSUMPTIONS AND LIMITING CONDITIONS**

This appraisal report is subject to the following assumptions and limiting conditions:

No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.

The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.

Responsible ownership and competent property management are assumed.

The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.

All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.

It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.

It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.

It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in the appraisal report.

It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

The appraiser, by reason of this appraisal, is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question, except as provided for herein.

Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval of the appraisers.

Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyl, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous





Mr. Morris Missry  
Wachtel Missry  
March 8, 2019  
Page 5

substances or environmental conditions, may affect the value of the property, the value is predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

All values rendered within this report assume marketing times of twelve months or less unless otherwise indicated.

The appraiser is authorized by the client to disclose all or any portion of this report and the related data to appropriate representatives of the Appraisal Institute, or other professional organizations of which the appraiser is a member or affiliate, if such disclosure is required to enable the appraiser to comply with bylaws and regulations of such organizations.

The Americans with Disabilities Act (ADA) became effective January 26, 1992. No specific compliance survey and analysis of the property to determine whether or not it is in conformity with the various detailed requirements of the ADA was conducted. It is possible that a compliance survey of the subject property, together with a detailed analysis of the requirements of the ADA, could reveal that the subject property is not in compliance with one or more of the requirements of the act. If so, this could have a negative effect upon the value of the subject property. Since we have no direct evidence relating to this issue, we did not consider possible non-compliance with the requirements of ADA in estimating the valuations contained herein.

No personal liability shall be asserted or enforceable against the partners, members, managers, shareholders, directors, officers, employees and affiliates of KTR for matters arising out of or in connection with the Agreement.

In no event shall either party be liable to the other party for any consequential, incidental, or indirect damages including, though not limited to, loss of income, loss of profits, loss or restriction of use of property, or any other business losses except due to such damages caused by the gross negligence or willful misconduct of the parties.

KTR Real Estate Advisors LLC and Thomas J. Tener, MAI, as an individual and/or any members, agents, employees, successors, heirs or personal representatives of the foregoing (collectively "KTR") will not have any liability to the parties for any act or omission arising out of or in connection with this appraisal assignment, except for acts that determined to be grossly negligent or to constitute intentional misconduct. In all events, KTR shall have no liability for indirect, consequential, punitive or other special damages arising out of or in connection with this assignment. In the event of any conflict in the wording in this exculpation section, the alternative that is most protective of KTR shall govern. If any portion of this section shall be declared null and void by any court of competent jurisdiction, then the remainder of the text shall remain in full force and effect. It is acknowledged and agreed that the protections contained in this exculpation section are a necessary further inducement by KTR to take on this assignment.

In connection with the services provided under this agreement, Vanderbilt Atlantic Holdings LLC hereby agrees to indemnify, defend and hold harmless KTR and its owners, directors, officers, employees and affiliates (each, an "Indemnified Person") from and against all damages, expenses, claims and costs (each, a "Loss"), including reasonable attorneys' fees, incurred in investigating and/or defending any claim arising from or in connection with the services provided by KTR under this agreement.

The terms and conditions set forth herein shall survive the termination of the Agreement. Any and all reports submitted by KTR shall be subject to the terms and limitations of this Agreement.

Neither Client nor KTR shall hold the other responsible for damages or delays in performance caused by events beyond the control of the other party and which could not reasonably have been anticipated or prevented, including but not limited to, acts of governmental authorities, acts of God, materially different site conditions, wars, riots, rebellions, sabotage, fires, explosions, accidents, floods, strikes or other conditional acts of workers' lockouts, or



Mr. Morris Missry  
Wachtel Missry  
March 8, 2019  
Page 6

changes in laws, regulations, or ordinances. The party intending to invoke force majeure shall promptly provide written notice to the other party.



CASH ONLY IF ALL CHECKLOCK SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

**Vanderbilt Atlantic Holdings LLC**390 Berry Street, Suite 201  
Brooklyn, NY 11249**Signature Bank**  
565 Fifth Avenue, 12th Floor  
New York, NY 10017  
1-1367/280

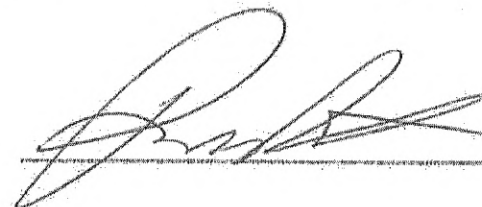
2007

3/11/2019

PAY TO THE  
ORDER OF KTR Real Estate Advisors LLC

\$\*\*15,000.00

Fifteen Thousand and 00/100\*\*\*\*\* DOLLARS

KTR Real Estate Advisors LLC  
551 Madison Ave, Suite 301  
New York, NY 10022MEMO  
retainer

⑈002007⑈ ⑆026013576⑆ 1503088491⑈

Vanderbilt Atlantic Holdings LLC

KTR Real Estate Advisors LLC

3/11/2019

2007

15,000.00

Signature - 8491      retainer

15,000.00

Vanderbilt Atlantic Holdings LLC

KTR Real Estate Advisors LLC

3/11/2019

2007

15,000.00

PAYMENT  
RECORD

Signature - 8491      retainer

15,000.00

Rev 3/13